

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5775 OF 1995

shri Lalmani S. Dube

... Petitioner

V/s

Shri Chandrabali J. Tiwari

... Respondent

Mr. J.G. Reddy with Ms. Suhasini Mutalik for the petitioner.

Mr. K.K. Malpathak for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 18TH APRIL, 2006

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. The petitioner tenant has challenged the order passed by the 7th Addl. District Judge, Thane, dismissing the appeal and confirming the judgment and decree passed by the Trial Court decreeing the suit for eviction of the petitioner from the suit premises on the ground that the petitioner defendant was rendered defaulter in law for payment of rent for more than six

months and, therefore, was not protected by the provisions of the Bombay Rent Act.

3. The petitioner defendant is the tenant of one Room admeasuring 15" x 12" in a chawl situated at Gokulaswadi, Khopat, Thane on monthly rent of Rs.30/- p.m. The landlord issued demand notice to the petitioner by Registered Post on 4.5.1984 which was returned unserved and, therefore, the suit was filed on the ground of default and alternative accommodation as well as non-user and claimed recovery of suit premises.

The defendant contested the suit inter-alia denying all the allegations.

The Trial Court, after hearing both parties on merits, came to the conclusion that the plaintiff had proved that defendant was defaulter in payment of rent for more than six months and he was not ready and willing to pay the arrears of rent. It was held that the suit premises were not in use since March, 1983 and hence decree came to be passed.

The appeal was carried to the lower appellate Court. The lower appellate Court concurred with the findings of

the Trial Court and dismissed the appeal. Hence the present petition.

4. The only question involved in this matter is, whether there was proper service of demand notice contemplated under the provisions of the Bombay Rent Act.

Both the Courts below have discussed the evidence in details pertaining to the service of the notice while coming to the conclusion that the service was proper. I do not see any flaw in the reasoning adopted by the Courts below in holding that the suit notice was properly served.

Once this position is clear, then it is revealed from the record that in the course of pendency of the suit also, the defendant did not try to tender the rent which he ought to have deposited in the Court, however, it appears from the record that the defendant did not deposit the amount of rent nor proved the submission that he had made the rent upto March, 1984. He also failed to comply with the notice and hence, under the circumstances, the Courts below appear to have passed the decree contemplated under Sec. 12 of the Bombay

Rent Act.

5. There is absolutely no perversity in the reasoning adopted and findings recorded by the Courts below and, therefore, the petition is devoid of any merits and, therefore, the petition stands dismissed with no order as to costs.

6. At this stage, the learned counsel for the petitionenr seeks some time to vacate the premises. In view of the facts and circumstances, the decree shall not be executed for the period of three months on furnishing undertaking by the petitioner to the effect that he shall not create any third party interest in the suit premises during the said period of three months and shall pay the agreed rent to the respondent. The undertaking to be furnished within two weeks from the date of this order by the petitioner as well as by all adult members of his family.

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